THE HONOURABLE SRI JUSTICE N.V.RAMANA

Writ Petition No.14078 of 2002

Dated:21st July, 2006

Between:

N.Brahma Lingam. **…..PETITIONER**

AND

The Depot Manager, APSRTC.
Narasipatnam Depot, Visakhapatnam
Dist (Management) and another. **….RESPONDENTS**

THE HONOURABLE SRI JUSTICE
N.V.RAMANA

W.P.No.14078 of 2002

ORDER:

This writ petition is filed by the workman challenging the nil award dated 4-9-2001 passed in I.D.No.151 of 2000 by the Industrial Dispute Cum Labour Court, Visakhapatnam.

Petitioner is a Conductor in the respondent Corporation. On 31-1-1999 while he was conducting the bus bearing No.AP9Z 5774 which was plying as Jathara Special on the route from Ravalapalem to Addaroad a check was conducted and found that the petitioner involved in cash and ticket irregularities. A charge sheet was issued to the petitioner on 13-2-1999 calling for spot explanation and was suspended on the same day. In the charge sheet three charges were framed. First charge for failure to issue the requisite tickets of Rs.3/- each to 40 passengers, second charge for failure to observe the rule 'Issue & Start' and third charge for closing the tray numbers of all denominations up to stage No.8 Adda Road without issuing tickets to 40 passengers. However, petitioner submitted his explanation to the charge sheet. After conducting a domestic enquiry petitioner was removed from service by proceedings dated 5-8-1999. Appeal preferred against the order of removal before the Deputy Chief Traffic

Manager, Visakhapatnam was rejected. Thereafter the review filed before the Regional Manager, Visakhapatnam was also rejected. Aggrieved by the said removal order dated 5-8-1999 petitioner preferred an industrial dispute before the tribunal in I.D.No.151 of 2000, which was also dismissed, which is the subject matter of the writ petition.

Learned counsel for the petitioner submitted that the petitioner before the day the check took place on 31-1-1999 has conducted the bus entire night and day, and due to overload of Jatra passengers he could not issue tickets to those 40 passengers. The learned counsel therefore prayed that the writ petition be allowed and the impugned order be set aside.

On the other hand, the learned Standing Counsel for x respondents-APSRTC submitted that the petitioner being a Conductor, is required to follow the rule of "issue and start", and he cannot contend that because the bus was overloaded, he could not check each and every passenger, whether they have taken ticket or not. He submitted that the tribunal has passed the award based on the entire evidence placed before it and there is no error or irregularity in the award, and prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner as also the learned Standing Counsel for A.P.S.R.T.C and perused the award of the tribunal.

The award of the tribunal would disclose that the petitioner did not even reply to the enquiry report sent to him on 16-6-1999 seeking his objections. The petitioner has written and attested Ex.M3 the categorical statement of 40 passengers stating that they all paid Rs.3/- each to the petitioner and the petitioner did not issue any ticket. The truth of said statement under Ex.M.3 cannot be disbelieved and has to

be accepted. The impugned award of the tribunal would also disclose that the petitioner before the tribunal filed a memo to the effect that he is not questioning the validity of the domestic enquiry and in view of that the tribunal upheld the domestic enquiry as valid. The tribunal disbelieved the contention that due to over-load of Jatra passengers the petitioner could not issue tickets to 40 passengers in question. The tribunal held that if the bus was overloaded the petitioner could not have issued tickets to one or to two passengers, but not for 40 passengers. Therefore, the petitioner cannot say that due to overload he could not issue tickets. It is seen from the award the petitioner has violated the rule "issue and start". Had the petitioner followed the rule "issue and start" he would have allowed the bus to start after issuing tickets to all the passengers. Even before the tribunal the petitioner did not produce any material to substantiate his case. The tribunal after going through the entire evidence, placed before it, came to the conclusion that the punishment imposed by the authoritities for the misconduct of the petitioner in not issuing tickets to 40 passengers is not disproportionate and dismissed the I.D by passing the impugned award.

Insofar as the contention that the punishment of removal is disproportionate to the misconduct committed, in **V. Ramana v. APSRTC**[1], the apex Court held that the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision for that of the administrator and that the scope of judicial review is limited to the deficiency in decision making process and not the decision, and that unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, there is no scope for interference. In that view of the matter, I am of the considered opinion,

that it is not a fit case where the administrator's decision as upheld by the tribunal warrants interference.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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(N.V. RAMANA, J.)

Date:21st July, 2006.
GRK

The petitioner joined the service of the respondents-APSRTC as Conductor in 1989. While he was conducting the bus on 17.09.1999, a check was exercised, and for violation of the rule “issue and start”, for allowing an invalid Bus Pass holder to travel the bus, for failing to check the bus passes and for closing the S.R. upto stage No.14 without issuing the tickets perfectly, he was charge-sheeted. The petitioner did not submit his explanation. Therefore, an enquiry

was ordered into the charges. Based on the enquiry report, the petitioner was issued show cause notice of removal, but he did not submit his explanation thereto. Therefore, respondent No.3-Depot Manager, vide order dated 31.12.1999, removed the petitioner from service.

Aggrieved thereby, the petitioner preferred appeal to respondent No.2-Divisional Manager, who vide orders dated 15.03.2002, dismissed the appeal and confirmed the orders of respondent No.3. Assailing the said orders, the petitioner preferred revision petition before respondent No.1-Regional Manager, who vide orders impugned in the writ petition, while upholding the charges, on humanitarian grounds, set aside the order of removal passed by respondent No.3, as confirmed by respondent No.2, and directed his reinstatement into service, and as a measure of penalty, reduced his pay scale to the minimum for a period of two years, which shall have the effect of postponing his future increments.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC.

The learned counsel for the petitioner submitted that the petitioner, in fact, asked all the passengers to take ticket, but one particular passenger, replied that he is having bus pass, but unfortunately, when the check was exercised, he was found traveling with an expired bus pass ticket. He submitted that during the relevant time, his wife was suffering from heart problem, and he was posted on the route, which he had not conducted earlier. At the time when check was exercised by the checking officials, nearly 90 passengers were traveling in the bus, and due to his wife's health condition, his mind was disturbed, and such situation, he could not check the bus passes of each and every passenger. He submitted that the petitioner having

not committed any cash and ticket irregularities, respondent No.1 had rightly set aside the order of removal, passed by the disciplinary authority, as confirmed by the appellate authority, and ordered his reinstatement into service. He submitted that respondent No.1 having ordered his reinstatement into service, committed an error in reducing his pay to the minimum scale, for a period of two years, which shall have the effect of postponing his future increments, as a measure of penalty. He submitted that the punishment imposed by respondent No.1 as a measure of penalty, is highly disproportionate to the nature of lapse, and prayed that the impugned order be set aside and the writ petition be allowed.

On the other hand, the learned Standing Counsel for the respondents-APSRTC submitted that the petitioner being a Conductor, is required to follow the rule of “issue and start”, and he cannot contend that because the bus was crowded, he could not check each and every passenger, whether they have taken ticket or were traveling with bus passes. He submitted that though punishment of removal from service imposed by respondent No.3, was confirmed by respondent No.2, respondent No.1 though concurred with the findings arrived at in the departmental enquiry, taking into consideration the pleas put-forth by the petitioner, on humanitarian grounds, reinstated the petitioner into service, but as a measure of punishment, reduced the pay of the petitioner to the minimum scale of conductor for a period of two years, which shall have the effect of postponing his future increments, and no exception can be taken thereto.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC.

The petitioner, admittedly, did not reply to the charges. However, in the enquiry proceedings, the petitioner has himself

admitted that he did not check the bus pass of the passenger, because he stated that he is having bus pass. The said passenger, admittedly, was found by the checking officials, to be traveling with an invalid bus pass. Had the petitioner, being a conductor, checked the bus pass of the passenger, the passenger would not have traveled with an invalid bus pass ticket, and in fact, would have taken the ticket. May be the petitioner's wife was suffering from heart problems and that at the time of check, there were nearly 90 passengers traveling in the bus, but they by themselves are not extenuating grounds for the petitioner not to issue tickets to passengers and not to check the bus passes of the bus pass holders. If the bus was crowded, the petitioner ought to have stopped the bus, issued the tickets, checked the bus passes, and then started the bus, which he did not do, and by not doing so, he violated the rule of "issue and start". The petitioner, being a Conductor, is duty bound to issue tickets to each and every passenger and check the bus passes in the case of bus pass holders, and he cannot be allowed to contend that because the bus was crowded and that because his wife was suffering from heart problems, he could not check each and every passenger, whether he or she has taken ticket or not and whether he or she was traveling with a valid bus pass or not.

The duties and responsibilities of a bus conductor, are to issue tickets to all the passengers and ensure that no passenger travels without a valid ticket. Taking into consideration the admitted stand of the petitioner that he had not checked the bus passenger, who was found to be traveling with an invalid bus pass, which constitutes serious misconduct, respondent No.3 removed him from service, which was confirmed by respondent No.2 in appeal. Though respondent No.1 concurred with the findings arrived at in the departmental enquiry, he having regard to pleas put-forth by the petitioner, felt that the

punishment imposed is disproportionate, and accordingly, on humanitarian grounds took a lenient view and set aside the order of removal passed by respondent No.3 as confirmed by respondent No.2, and ordered his reinstatement into service. Had respondent No.1 set aside the removal order by setting aside the findings arrived at in the departmental enquiry, then the petitioner would have been justified in contending that respondent No.1 having set aside the order of removal by setting aside the findings, ought to have granted him consequential benefits, but that is not the case. Respondent No.1 though set aside the removal order, he in fact, had upheld the findings arrived at in the departmental enquiry pointing out to the guilt of the petitioner. In order to ensure that the guilt of the petitioner does not go unpunished, as a measure of punishment, while ordering his reinstatement, had reduced his pay to the minimum scale of Conductor for a period of two years, which shall have the effect of postponing his future increments, which by no stretch of imagination, can be said to be disproportionate to the admitted and proved misconduct, namely non-checking of a bus pass of a passenger, who was found to be traveling with an invalid ticket, or is shocking to the conscience of the Court, warranting interference. In **V. Ramana v. APSRTC**[2], the apex Court held that the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision for that of the administrator and that the scope of judicial review is limited to the deficiency in decision making process and not the decision, and that unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, there is no scope for interference. In that view of the matter, I am of the considered opinion, that it is not a fit case where the administrator's decision warrants interference.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

The next question considered by the tribunal was whether the punishment of removal from service imposed by the authorities is just or not.

The tribunal held that failure to issue tickets to 40 passengers even after collecting money from them is a gross negligence and it constitutes misconduct in terms of regulation No.28. The lower court also took into account Ex.P.3 the categorical statement given by all the 40 passengers that the petitioner has collected Rs.3/- from each one of them and did not issue ticket.

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[1] (2005) 7 SCC 338

[2] (2005) 7 SCC 338